

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:07-CR-46-D

UNITED STATES OF AMERICA

v.

ANOR BURNSIDE, JR.,

Defendant.

**ORDER**

On October 12, 2010, Anor Burnside, Jr. filed a motion to compel the United States to file a motion under Federal Rules of Criminal Procedure 35(b) [D.E. 188]. On June 22, 2011, the United States filed a motion to dismiss [D.E. 192].

Pursuant to a plea agreement [D.E. 88], Burnside pleaded guilty to conspiracy to distribute and to possess with the intent to distribute more than five kilograms of marijuana (count one) and to possession of firearms in furtherance of a drug trafficking crime (count three). At sentencing, the government moved for a downward departure under U.S.S.G. §5K1.1 [D.E. 156]. The court sentenced Burnside to 48 months on count one and 60 months consecutive on count three.

Burnside's plea agreement states that the government "is not promising to move for a departure pursuant to . . . Fed. R. Cr. P. 35." Plea Ag. ¶ 4(e). As explained in the government's motion to dismiss, the government lawfully exercised its discretion under Rule 35(b) and the plea agreement and declined to file a Rule 35 motion. See, e.g., Wade v. United States, 504 U.S. 181, 186 (1982); United States v. Wallace, 22 F.3d 84, 87 (4th Cir. 1984). Thus, Burnside's motion [D.E. 188] is DENIED and the government's motion to dismiss [D.E. 192] is GRANTED.

SO ORDERED. This 4 day of October 2011.

  
JAMES C. DEVER III  
United States District Judge